

IN THE UNITED STATES DISTRICT COURT FILED
SOUTHERN DISTRICT COURT
GEORGIA WICK DIV.
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

2013 JUN 26 A 9:57

ADALBERTO SANCHEZ,

Plaintiff,

v.

Rce
CLERK
SD. DIST. OF GA

CIVIL ACTION NO.: CV613-033

SMITH STATE PRISON,

Defendant.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, an inmate currently incarcerated at Smith State Prison in Glennville, Georgia, filed an action pursuant to 42 U.S.C. § 1983. A prisoner proceeding in a civil action against officers or employees of government entities must comply with the mandates of the Prison Litigation Reform Act, 28 U.S.C. §§ 1915 & 1915A. In determining compliance, the court shall be guided by the longstanding principle that *pro se* pleadings are entitled to liberal construction. Haines v. Kerner, 404 U.S. 519, 52 (1972); Walker v. Dugger, 860 F.2d 1010, 1011 (11th Cir. 1988).

28 U.S.C. § 1915A requires a district court to screen the complaint for cognizable claims before or as soon as possible after docketing. The court must dismiss the complaint or any portion of the complaint that is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1) and (2).

In Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 1997), the Eleventh Circuit interpreted the language contained in 28 U.S.C. § 1915(e)(2)(B)(ii), which is nearly identical to that contained in the screening provisions at § 1915A(b). As the language of § 1915(e)(2)(B)(ii) closely tracks the language of Federal Rule of Civil Procedure 12(b)(6), the court held that the same standards for determining whether to dismiss for failure to state a claim under Rule 12(b)(6) should be applied to prisoner complaints filed pursuant to § 1915(e)(2)(B)(ii). Mitchell, 112 F.3d at 1490. While the court in Mitchell interpreted § 1915(e), its interpretation guides this court in applying the identical language of § 1915A.

Plaintiff submitted an open letter to the Court in which he asserts he suffers from chronic sinusitis. Plaintiff contends that he has requested surgery to treat his condition, but Dr. Joe Taylor “is always find [sic] me different illness in order to not put me on surgery.” (Doc. No. 1, p. 1). Plaintiff alleges that the medication he has been prescribed does not relieve his symptoms. Plaintiff requests that the Court help him obtain the surgery he desires. Plaintiff attached copies of the denied formal and informal grievances he filed requesting surgery for his sinusitis.

Plaintiff’s letter addresses Smith State Prison as the Defendant in this case. A plaintiff must set forth “a short and plain statement of the claim showing that [he] is entitled to relief.” FED. R. CIV. P. 8(a)(2). In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must satisfy two elements. First, a plaintiff must allege that an act or omission deprived him “of some right, privilege, or immunity secured by the Constitution or laws of the United States.” Hale v. Tallapoosa County, 50 F.3d 1579, 1582 (11th Cir. 1995). Second, a plaintiff must allege that the act or omission was

committed by "a person acting under color of state law." Id. Plaintiff's claims against Smith State Prison cannot be sustained. While local governments qualify as "persons" to whom section 1983 applies, Monell v. Dep't of Soc. Servs., 436 U.S. 658, 663 (1978); Parker v. Williams, 862 F.2d 1471, 1477 (11th Cir. 1989), state agencies and penal institutions are not generally considered legal entities subject to suit. See Grech v. Clayton County, Ga., 335 F.3d 1326, 1343 (11th Cir. 2003). In light of Plaintiff's pro se status, however, Plaintiff arguably sets forth an allegation that Dr. Joe Taylor refused Plaintiff medical care.

The Eighth Amendment's proscription against cruel and unusual punishment imposes a constitutional duty upon prison officials to take reasonable measures to guarantee the safety of prison inmates. This duty to safeguard also embodies the principle expressed by the Court in Estelle v. Gamble, 429 U.S. 97, 104 (1976), forbidding prison officials from demonstrating deliberate indifference to the serious medical needs of inmates. Farmer v. Brennan, 511 U.S. 825, 832 (1994). However, the Supreme Court cautioned in Estelle that not "every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment." 429 U.S. at 105. In Harris v. Thigpen, 941 F.2d 1495, 1505 (11th Cir. 1991), the Eleventh Circuit explained that a difference in opinion between the prison's medical staff and the prisoner as to diagnosis or course of treatment does not amount to a claim under the Constitution. It is apparent that Plaintiff has received continuous medical treatment while housed at Smith State Prison. See Doc. No. 1, p. 2. Plaintiff simply disagrees with the course of treatment prescribed by the prison's medical staff. Plaintiff's allegations cannot be sustained, and his "Complaint" should be **dismissed**.

CONCLUSION

Based on the foregoing, it is my **RECOMMENDATION** that Plaintiff's "Complaint" be **DISMISSED** based on his failure to state a claim upon which relief may be granted.

SO REPORTED and RECOMMENDED, this 26th day of June, 2013.



JAMES E. GRAHAM
UNITED STATES MAGISTRATE JUDGE